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Supreme Court of the United States

OCTOBER TERM, 1945. No. 328

IN THE MATTER

of

SPIER AIRCRAFT CORPORATION,
Bankrupt,

SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Appellant.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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Supreme Court of the United States

OCTOBER TERM, 1945. No. .

IN THE MATTER

of

SPIER AIRCRAFT CORPORATION,
Bankrupt,

SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

(Italics ours, unless otherwise noted.)

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Summary Statement of Matter Involved.

1. Petitioner challenges the correctness of a decision by the United States Circuit Court of Appeals for the Third Circuit which affirmed an order (Tr. p. 77) of the United States District Court for the District of New Jersey upholding a claim filed by the City of Jersey City against the estate of the Spier Aircraft Corporation, bankrupt, for per-

sonal property taxes in the sum of $11,803.04. The opinion of the District Judge is at pages 75-76 of the Transcript. The Referee's memorandum opinion is at pages 65-68 of the Transcript. The United States Circuit Court of Appeals affirmed the District Court without opinion.

2. On January 22, 1943 a petition in involuntary bankruptcy was filed against Spier Aircraft Corporation in the United States District Court for the District of New Jersey. Adjudication followed on February 9, 1943. On February 10, 1943 the Collector of Taxes of the City of Jersey City filed a claim (Tr. pp. 2-4) with the Referee in Bankruptcy claiming unpaid personal taxes due from the bankrupt in the sum of $3,024.96. On September 8, 1943 the Collector of Taxes of the City of Jersey City filed with the Referee a document denominated "Supplemental Proof of Claim" (Tr. pp. 5-7) in which taxes for the year 1943 were claimed to be due from the bankrupt in the sum of $11,803.04 instead of $3,024.96 as was originally claimed. Nothing appears in the supplemental proof of claim which indicates the basis for the increased amount thereof. The record is barren of any proof as to what rights in tangibles entered into the determination of the Tax Collector.

3. Petitioner objected to the increased claim. The increase in the assessment was due to a revaluation of the bankrupt's property by the Hudson County Board of Taxation, without notice to petitioner or the Referee in Bankruptcy (Tr. pp. 34-36). It was purely an administrative act and not the result of a due hearing, nor the act of a quasi-judicial agency (Tr. p. 30). At the time of the filing of the supplemental proof of claim the time for appeal from the increased assessment made by the Hudson County Board of

Taxation had expired (Tr. p. 34). By reason thereof petitioner was deprived of the right of appeal from such increased assessment or revaluation.

4. The revaluation of the property was attributable to the fact that in the course of the proceedings in bankruptcy a bid for the assets of the bankrupt in the sum of $165,000.00, free and clear of all liens, had been made (Tr. 30). This bid was never accepted, the property involved having been requisitioned by the United States Government through the Navy Department, which tendered $133,850.56 in payment, which offer petitioner rejected. The United States Court of Claims has fixed $165,000.00 as the amount of just compensation. The time for review of the latter determination of the United States Court of Claims has not yet expired, and whether certiorari will be sought cannot now be stated. The Referee in Bankruptcy found (Tr. 67, Appendix 6A), that in bankruptcy the assets of the corporation were subject to conditional sales contracts and a chattel mortgage aggregating $82,041.72.

5. Petitioner contended below that the increased tax was confiscatory and discriminatory, and that the Hudson County Board of Taxation of the City of Jersey acted beyond its legal powers; that his constitutional rights were denied him because the time to appeal from such assessment had expired prior to the filing of the supplemental proof of claim or notice of the existence thereof; that the creditors of the bankrupt estate are entitled to the benefit of a reduction in the tax assessment to the extent of the unpaid balances due on the conditional sales contracts existing against the property upon which the assessment was

made, inasmuch as the bankrupt corporation had merely special title in such property to the extent of payments made on account thereof, the general property therein remaining in the conditional vendors; that at best the extent of the tax imposed upon the estate should have been calculated and fixed on the amount that Spier Aircraft Corporation paid on account of the contract price, for otherwise the general creditors of the estate of the bankrupt would be paying taxes upon property which did not belong to the bankrupt, but in which the bankrupt had only a partial interest.

6. Petitioner contends that the determination by the United States Circuit Court of Appeals for the Third Circuit was erroneous and violative of his constitutional rights and the rights of general creditors, and in direct conflict with the decisions of the Courts of the various circuits, all of which are more particularly hereinafter set forth.

7. This is a petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Third Circuit, and the questions presented for determination upon this petition are set forth in Appendix B (p. 12) hereunto annexed.

Reasons Relied Upon for Allowance of the Writ.

1. This case presents questions of constitutional law arising out of the determination in the Courts below, and which in the first instance found its basis primarily in expediency rather than in legal foundation. Consideration and determination of these questions by this Court is necessary for the future guidance of the various Federal Courts throughout the land.

2. The determination by the Court below was in disregard of the rights of petitioner as trustee in bankruptcy, and of the rights of the general creditors of Spier Aircraft Corporation, in that the effect of the decision of the Court below is to require the general creditors of the bankrupt to pay taxes upon property not owned by the bankrupt estate.

3. Petitioner contends that encumbered personal property located upon a bankrupt's premises is taxable only to the extent therein of the special property existing in favor of the bankrupt, the tax being calculable only on the value of such special property.

Petitioner's contention in this regard is strengthened by the concession of the City of Jersey City in its brief filed with the Court below, in which it states at page 13 thereof:

> "Tangible personal property, actually located in the taxing district of Jersey City, *legal title* to which is in the bankrupt, is taxable by said authority according to its true value, regardless of chattel mortgages or conditional sales."

4. It is respectfully submitted that the *legal* title to the property which was subject to the unpaid balances on the conditional sales contracts was not in the bankrupt, and was therefore not taxable as against the bankrupt estate. We contend that the determination by the United States Circuit Court of Appeals for the Third Circuit is erroneous and not in accord with the principles of applicable decisions, and is in apparent conflict with *In re D. O. Summers Co.* 45 A. B. R. (N. S.) 123; *Robertson* v. *Goree* (C. C. A. 5th Cir.), 13 A. B. R. (N. S.) 64, 29 Fed. (2d) 261; *Murray McLeish Co.* 10 A. B. R. (N. S.) 307; *Torrington Co.* v.

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5. In sustaining the controverted claim, the Court below in effect approved the methods of the taxing authorities in effecting a revaluation and increased assessment. These methods, inferentially, were condemned by this Court in *Township of Hillsborough* v. *Doris Duke Cromwell*, decided January 28, 1946, Vol. 90—No. 7, Sup. Ct. L. Ed. Ad. Sh. 298.

6. The increased assessment was the result of arbitrary and capricious acts on the part of the taxing authority, the product of hearsay, without trial or hearing afforded to petitioner, all of which petitioner contends was in violation of fundamental rights of the creditors whom petitioner is in duty bound to protect.

7. The United States Circuit Court of Appeals for the Third Circuit has decided these important questions in a way untenable and in conflict with the greater weight of legal authority, and is in conflict with the Fifth Amendment to the Constitution of the United States. The decision has the effect of creating confusion as to the proper rule of law which should be applied.

8. In the interests of brevity (Rule 38, Paragraph 2), petitioner restricts further discussion on these points, but respectfully refers to and incorporates by this reference thereto all of the matters presented to the United States

Circuit Court of Appeals for the Third Circuit, in the transcript of the record on appeal, with the same force and effect as if herein set out at length.

WHEREFORE, petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day to be therein named, a transcript of the record and proceedings herein; and, that the decree of the United States Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court; and, your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MAX L. ROSENSTEIN,
Counsel.

APPENDIX "A".

Constitutional Provisions, Federal and State Statutes Involved.

1. That portion of the Fifth Amendment to the Constitution of the United States which provides:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law."

2. New Jersey Statutes Annotated, R. S. 54:4-1:

> "Property subject to tax; date of assessment:
> All property, real and personal, within the jurisdiction of this state not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter at its true value, and shall be valued by the assessors of the respective taxing districts. Property omitted by the assessors may be assessed as hereinafter provided. All property shall be assessed to the owner thereof with reference to the amount owned on October first in each year, and the person so assessed for personal property shall be personally liable for the taxes thereon."

3. New Jersey Statutes Annotated, R. S. 54:4-14:

> "After making the valuation of the personal property for which a person shall be assessed the asesssor may deduct therefrom all debts bona fide due and owing from such persons to creditors residing in the state, but no such deduction shall be made unless the debtor shall make claim therefor in writing under oath and therein set forth the debts

owing by him, when incurred, to whom owing and where the creditor resides, the total amount of personal property of the claimant, including debts owing to him from solvent debtors, and also that no part of the debt was incurred for the purpose of reducing the taxes of the claimant, and that the stated value of the personal property of the claimant includes not only that to which he holds title or possession, but also that to which any other person holds title or possession for the claimant, whether in trust or not. A claim on behalf of a corporation shall be subscribed and sworn to by the president or principal officer."

4. Sec. 64A (4) (U. S. C. A. Title 11, Chap. 7, Sec. 104):

"The debts to have priority, in advance of payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: Provided that no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the Court."

Supreme Court of the United States

OCTOBER TERM, 1945. No. .

IN THE MATTER
of
SPIER AIRCRAFT CORPORATION,
Bankrupt,
SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion Below.

The United States Circuit Court of Appeals for the Third Circuit rendered a *per curiam* opinion on May 1, 1946, and is reported in Fed. (2d) .

II.

Jurisdiction.

Jurisdiction in this Court is invoked under Section 240-A of United States Judicial Code as amended by Act of February 13, 1925, 28 U. S. C. A. Sec. 347-A.

III.

Statement of the Case.

The essential facts in the instant case are fully set forth in the accompanying petition for Writ of Certiorari, and in the interests of brevity are not further elaborated upon. All necessary points involved will be discussed in the argument to follow.

APPENDIX "B".

Questions Presented.

1. Whether personal property of a bankrupt, subject to conditional contracts of sale is taxable to the full extent of the face value of such property, without diminution *pro tanto* to the extent of the valid liens against the same.

2. Does the assessment, levy and attempt to collect a tax from the bankrupt estate, beyond the extent of the interest of the bankrupt in the taxed property, constitute an invasion of constitutional rights.

3. The proofs show indisputably that the increase in tax was predicated upon a re-valuation of personalty in the possession of the bankrupt, without a judicial trial or hearing, and the question is raised whether there has been a denial of substantial constitutional rights.

POINT I.

The legal liability for taxes is measured by the interest in the property taxed. A tax beyond that is confiscatory and unconstitutional.

In the instant case it was established that there were admitted liens against the personalty of the bankrupt amounting to $82,041.72, the legality of which were not questioned. It is contended by the City of Jersey City in Point III of its brief in the Court below that "tangible personal property actually located in the taxing district of Jersey City, *legal title to which is in the bankrupt,* is taxable by said authority according to its true value, regardless of chattel mortgages or conditional sales." This statement while untenable, and without legal support, nevertheless, contains a concession that the only property taxable is that, legal title to which, is in the bankrupt.

Spier Aircraft Corporation had only a special interest in the chattels covered by the conditional sales contracts which existed here. It did not have legal title thereto. The legal title was vested in the conditional vendors. The only interest which the bankrupt had in the chattels covered by the contracts did not extend beyond the payments made by the bankrupt on account of the contracts under discussion.

The author of *Collier's* 14th Edition, Vol. 3, at page 2137 discusses this subject and says:

> "Under the proviso as extended by the 1938 Act to include both real and personal property, a needed element has been supplied. Any personal property incumbered, as by a chattel mortgage, or depreciated

in value may be abandoned by the trustee; or in the alternative evaluated as to the extent of the bankrupt estate's interest, as by a sale, and taxes paid on the basis of such evaluation."

Citing *In re D. O. Summers Co.*, 45 A. B. R. (N. S.) 123.

"Thus the estate will have no interest in personal property set aside to the bankrupt as exempt. Problems of allocating a general personal property assessment among the items of personal property of the estate may give trouble in some states where personalty assessments are not always as sharply confined to particular possessions as are those on real estate. But the existence of a valid lien on either real or personal property is not affected by the operations of this proviso. Any tax payment from funds in the trustee's control will be limited to the value, if any, of the estate's interest in the property over and above the amount of the lien."

Citing *Robertson* v. *Goree* (C. C. A. 5th Cir.), 13 A. B. R. (N. S.) 64, 29 Fed. (2d) 261; *Murray McLeish Co.*, 10 A. B. R. (N. S.) 307; *Torrington Co.* v. *Sidway-Topliff Co.*, (C. C. A. 7th Cir.), 70 Fed. (2d) 949; *In re Wingert* v. *Hartle*, (C. C. A. 4th Cir.) 22 A. B. R. (N. S.) 113; 62 Fed. (2d) 418; *Little* v. *Wells* (D. C., Idaho), 13 A. B. R. (N. S.) 370, 29 Fed. (2d) 1003; See *Bristow*, Some Problems Arising Out of Tax Claims in Bankruptcy (1940) 14 Journal of National Association of Referees, 90.

The determination by the Court below requires the trustee to pay a tax upon property which did not belong to the bankrupt, thus depriving the bankrupt's creditors of moneys belonging to them. It conflicts with decisions of Courts of equal and subordinate jurisdiction, and is contrary to the greater weight of legal authority.

We respectfully submit that the Court below could no more lawfully direct the payment by the trustee of a tax upon property which the bankrupt did not own, than it could order the sale of property in the possession of the trustee, but which did not belong to the bankrupt.

This Court in *Curry* v. *McCanless,* 307 U. S. 357, 83 L. Ed. 1339, 59 Sup. Ct. 900, through late Mr. Justice Stone, defined what rights in tangibles are available for the purposes of taxation. It is implicit in the language of Mr. Justice Stone that jurisdiction to tax land or chattels is dependent upon the *ownership* and location of the property sought to be taxed. The principle which is deducible in that case, and applicable here, is that those chattels are taxable as against the *owner* who is enabled to enjoy the fruits of his *ownership.* Only the owner of the property located in a taxing district is the one liable to taxation. Inasmuch as taxes are designed for the protection of one *owning* property, and it being a fundamental and generally accepted rule that persons holding property under conditional sales contracts are not the owners of such property, but merely have a special interest therein, the attempt to levy a tax upon the entire value of the chattels, as against a conditional vendee who merely holds possession thereof is devoid of any legal attribute.

In *General Motors Acceptance Corporation* v. *Hayes Motor Co., et als.,* 12 N. J. Misc. 384, 172 Atl. 343, the plaintiff, holding by assignment a conditional sales contract, sued in replevin to recover possession of a motor vehicle covered by the contract. The vehicle had been seized by the Sheriff of Warren County, New Jersey for overloading, in violation of P. L. 1933, Ch. 157, which provided a penalty

therefor. In finding for the plaintiff, the Court said, at page 387, 172 Atl. 343:

> *"Under the Uniform Conditional Sale act, the conditional vendor or finance company is construed to be the owner of the vehicle, the conditional sale act specifically stating that a conditional sale is actually a bailment * * * It is undoubtedly true that General Motors Acceptance Corporation is the legal owner of the vehicle in view of its conditional sale contract."*

The defendant there, contended that replevin did not lie in case of distress for any tax, assessment or fine to be collected or levied in pursuance of any law in the State of New Jersey. The Court rejected this contention and said:

> "This section does not apply to the case of taking of goods of a person who is in nowise subject to the tax." *Noyes* v. *Finneran,* 12 N. J. L. 216.

In *General Motors Acceptance Corporation* v. *Whitfield* (1934), 62 S. Dak. 415, 253 N. W. 450, a statutory lien for delinquent personal property tax was held not to attach to the interest of a conditional vendee in an electric refrigerator, since title to the refrigerator remained in the seller, and hence the seller could recover a tax paid under protest to prevent the sale of the refrigerator.

Speaking for the Court, Campbell, *J.*, said in part:

> "* * * conditional sale * * * is not a case where complete title, property, and ownership pass to the vendee * * *"

* * * * * *

"Legal title never passes out of the vendor until performance of the contract."

* * * * * *

"Conceding that by virtue of Section 6759, R. C., 1919, all personal property owned by Bessler (the conditional vendee) on January 1, 1931, or thereafter acquired, was subject to a first lien in favor of the state for all delinquent personal property tax of Bessler, and conceding that on January 1, 1932 a lien likewise attached to personal property of Bessler for his delinquent personal property tax of 1931, nevertheless such lien could not attach to property rights which had always belonged to appellant (the conditional vendor) with which appellant never parted and which Bessler did not then and never had owned, although he might have a contract right to obtain them. Bessler did not have on January 1, 1932, or at any time prior to the attempted levy, legal title to or complete property rights in the Frigidaire in question. By virtue of the conditional sale contract he undoubtedly had rights with reference to said Frigidaire in the nature of property rights. See *Williston on Sales,* Section 326; Bogart Commentaries, *supra,* page 31. It may very well be true that Bessler could transfer or encumber his rights (such as they actually were) and that the same could be reached by his creditors, and if apt procedure was provided by statute could be applied to his taxes; but we do not think his rights were of such nature that they could be reached by distress or sale under the provisions of Section 6775, R. C. 1919."

* * * * * *

"Conceding that Bessler had a right in the Frigidaire in question in the nature of a property right, yet nevertheless it was not the entire property in

> the *res*, and was not, we think, the sort of property right susceptible of seizure, or sale in the manner provided by Section 6775. In other words the Frigidaire in question was not, under the circumstances herein appearing, 'personal property of' Bessler within the meaning of'' the statute.

The situation presented in the case just discussed is analogous to that involved in the instant case. The applicability of the decision there, to the instant case, appears to be open to little argument.

The inferences to be drawn from Judge Campbell's opinion are that the bankrupt had only a special property in those chattels covered by the conditional sales contracts and that the title to such chattels remain in the conditional vendor. The effect of this decision was to declare that the interest retained under the contract by the conditional vendor may not be attached, levied upon, or otherwise applied to the payment of personal property taxes which may be owing by the conditional vendee.

This being true, the converse is that no tax may be levied as against the conditional vendee on any property right other than that which he presently has, and that such other interests, or further rights in the chattels as may repose in other parties, are not available to the taxing authority in the assessment of a personal property tax upon a conditional vendee.

Professor George Gleason Bogert, draftsman of the Uniform Conditional Sales Act, in his Commentaries on Conditional Sales (cited in *General Motors*, vs. *Whitfield*, *supra*,) Vol. 2A (1924), page 37, Section 28, makes the following statement:

> "The Buyer's interest, when he is in possession, has been recognized as a proper subject of taxation, and by way of dictum the seller's property rights have also been called taxable. Singer Sewing Mach. Co. *v.* Cooper, (1920) 263 Fed. 994. This seems sound. The property in the goods may well be divided into two parts, the general property in the seller equal in value to the balance due on the price, and the special property in the buyer, to be valued at the worth of the goods, less the amount due to the conditional seller on the price. In Tuthill *v.* Wheeler, (1849) 6 Barb. (N. Y.) 362, goods were taxed as the seller's although in the buyer's possession; but the court seems to have treated the case as a mere contract to sell and not as a true conditional sale."

On the basis of the foregoing reasoning, it appears that at best the extent of the tax imposed upon the estate should have been calculated and fixed on the basis of the amount that Spier Aircraft Corporation paid on account of the contract price. This is all the more so, because in the instant case no question exists, nor was any raised as to the existence or validity of the conditional sales contracts and the balances due thereon, as found by the Court below. We contend that the personal property encumbered should be evaluated as to the extent of the bankrupt's interest, and taxes paid on the basis of such evaluation.

This is particularly true in view of the provisions of Section 64a of the Bankruptcy Act, which provide that:

> "The Court shall order the trustee to pay all taxes legally due and owing by the bankrupt."

See

In re Wells, (D. C. Md.) 23 A. B. R. (N. S.) 615, 4 Fed. Supp. 329.

POINT II.

The increased tax claim was a result of caprice, hearsay, without notice or hearing, and has no legal foundation.

The admitted facts show that the supplemental claim of the City of Jersey City was filed on September 8, 1943. It was not until then that the Bankruptcy Court or the trustee in bankruptcy were judicially charged with notice that any such claim was being asserted against the bankrupt estate. *Lambertville Rubber Co. Inc.* 111 Fed. (2d) 45, 42 A. B. R. (ns) 697. The bankruptcy statute regulates the manner in which claims may be asserted against a bankrupt estate, and until such claims are asserted in the manner provided for by law, the Bankruptcy Court is not charged with notice of the existence of such claims, and need not treat them in any distribution. It is equally plain from the record that the time to appeal from the re-valuation as fixed by the Hudson County Board of Taxation, without notice to petitioner, expired on August 15, 1943. It is admitted that no notice was given to the trustee or Referee in Bankruptcy of the assertion or existence of an increased claim based upon a re-valuation prior to September 8, 1943. Consequently, the increased valuation, having been imposed without notice, and asserted after the time to appeal from such increased assessment expired, is devoid of any legal quality. The plain import of the language of this Court in *Arkansas* v. *Thompson,* 313 U. S. 132, 61 Sup. Ct. 888, 85 L. Ed. 1244, is that a taxpayer in bankruptcy or reorganization is entitled to have at least

one separate trial on the question of the property taxed. Mr. Justice Black, speaking for the Supreme Court in the case, said, at page 143, in referring to *N. J.* v. *Anderson*, 203 U. S. 483, 51 L. Ed. 284, 27 Sup. Ct. 137:

> "But be that as it may, Sec. 64(a) specifically provides that in case any question arises as to the amount or legality of taxes, the same shall be heard and determined by the court, with a view to ascertaining the amount really due. We do not think it was the intention of Congress to conclude the bankruptcy courts by the findings of boards of this character, and that the claim should have been upon the basis of the capital stock actually outstanding."

This Court in *Township of Hillsborough* v. *Doris Duke Cromwell*, decided January 28, 1946, Vol. 90—No. 7, Sup. Ct. L. Ed. Ad. Sh. 298, said, at p. 302, said in respect to the methods prevailing in the State of New Jersey for a review of tax assessments:

> "In any event, there is such uncertainty concerning the New Jersey remedy as to make it speculative (Wallace *v.* Hines, 253 U. S. 66, 68, 64 L. ed. 782, 785, 40 S. Ct. 435) whether the State affords full protection to the federal rights."

Singularly, in the case cited the taxpayer's opportunity to appeal to the State Board of Tax Appeals had expired even before the Court below ruled on the motion to dismiss, for as Mr. Justice Douglas said, at page 303 to 304:

> "In the present case it appears that respondent's opportunity to appeal to the State Board of Tax Appeals had expired even before the District Court ruled on the motion to dismiss. And it is not

clear that today respondent has open any adequate remedy in the New Jersey courts for challenging the assessments on local law grounds."

Almost the same situation existed in the case at bar.

Conclusion.

Petitioner contends that there is manifest injustice in the determination by the Court below for the reasons following:

A. Regardless of the amount of the final award to the trustee in the litigation against the Government, the creditors of the bankrupt are entitled to the benefit of a reduction of the tax assessment to the extent of the admitted liens against the property, amounting to $82,041.72, for, otherwise, the creditors of the bankrupt estate would be paying taxes upon property which did not belong to the bankrupt but in which it had only a partial interest.

B. Should the litigation pending in the United States Court of Claims ultimately result in a determination that the trustee is entitled to recover the amount offered by the Government, to wit, $133,850.56, then the amount of the supplemental claim which was predicated upon an alleged valuation of $165,000.00 would be obviously excessive. In addition there is no proof as to the items which made up the property for which $165,000 was bid, and in the absence of such proof, the taxpayer is unable to safeguard his constitutional rights.

C. The method of re-valuation was arbitrary and capricious, without trial or hearing afforded to the trustee,

and, consequently, violative of petitioner's constitutional rights of protection against deprivation of property without due process of law.

It is respectfully submitted, therefore, that in order that the errors herein pointed out may be corrected and justice done, and the law properly and authoritatively defined, the judgment of the United States Circuit Court of Appeals for the Third Circuit be reviewed and reversed, and that to such end a writ of certiorari be granted.

MAX L. ROSENSTEIN,
Counsel for Petitioner.